

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PAUL MASCETTA and ANGELA
MASCETTA,

Petitioners,

-against-

UNITED STATES DEPARTMENT OF
TREASURY; INTERNAL REVENUE
SERVICE (IRS); and UNITED STATES
ATTORNEY'S OFFICE FOR THE
SOUTHERN DISTRICT OF NEW YORK,

Respondents.

20-CV-4810 (LLS)

ORDER DIRECTING PAYMENT OF FEE
OR IFP APPLICATION

LOUIS L. STANTON, United States District Judge:

Petitioners Paul and Angela Mascetta, who are husband and wife, bring this petition for a writ of *error coram nobis* under 28 U.S.C. § 1651 *pro se*, seeking declaratory and injunctive relief in Mr. Mascetta's closed criminal case in this Court. *See United States v. Mascetta*, No. 99-CV-0698 (S.D.N.Y. Dec. 12, 1999). Mr. Mascetta was convicted of conspiracy to commit security fraud, and as part of his sentence, he was ordered to pay restitution. *See id.* (ECF No. 7.) Petitioners now challenge Respondents' decision to apply Petitioners' 2019 joint tax refund to outstanding restitution payments, claiming that Respondents are without jurisdiction to do so because a twenty-year limitation period to collect restitution payments has expired. Petitioners name as Respondents the United States Department of the Treasury, the Internal Revenue Service, and the United States Attorney's Office for the Southern District of New York.

"Coram nobis is essentially a remedy of last resort for petitioners who are no longer in custody pursuant to a criminal conviction" but wish to challenge their conviction. *Fleming v. United States*, 146 F.3d 88, 89–90 (2d Cir. 1998). Although Petitioners style their submission as a

criminal motion to be filed in Mr. Mascetta's criminal case, for several distinct reasons, the Court concludes that they seek to bring a new civil action.

First, Mr. Mascetta and his wife filed this case, but only Mr. Mascetta may challenge his judgment of conviction in his criminal case.

Second, *both* Petitioners seek declaratory and injunctive relief, that is, an order:

(1) finding that Respondents were without jurisdiction to withhold their 2019 tax refund, (2) directing Respondents to release the tax refund, and (3) barring Respondents from future collection attempts. (*See* ECF No. 1.)

Third, Petitioners name respondents that were not parties to the criminal action. The parties to the criminal case were Mr. Mascetta and the United States; the USAO only represented the United States in its prosecution of Mr. Mascetta.

Finally, Petitioners do not challenge the validity of the order of restitution. Rather, Petitioners challenge Respondents' decision to withhold their tax refund and Respondents' continued attempts to enforce the order of restitution.¹

For these reasons, the Court concludes that Petitioners' submission should be construed as a new civil action. As Petitioners have initiated a new civil action, they must either pay \$400.00 in fees – a \$350.00 filing fee plus a \$50.00 administrative fee – or, to request authorization to proceed without prepayment of fees, each submit signed IFP applications. *See* 28

¹ Mr. Mascetta is free to seek *coram nobis* relief in his criminal case by filing a motion captioned for the criminal case. The Court offers no opinion as to the merit of any such motion but notes that courts within this Circuit have held that a defendant may challenge an order of restitution in a petition for a writ of *error coram nobis*. *See, e.g., Carnesi v. United States*, 933 F. Supp. 2d 388, 394 (E.D.N.Y. 2013) (after noting that the law in this Circuit is uncertain as to whether *coram nobis* relief is available, finding that petition for a writ of *error coram nobis* is proper vehicle to challenge order of restitution). But as stated above, Mr. Mascetta does not challenge the validity of the order of restitution.

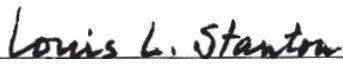
U.S.C. §§ 1914, 1915. If Petitioners submit IFP applications, each application should be labeled with docket number 20-CV-4810 (LLS). If the Court grants the IFP applications, Petitioners will be permitted to proceed without prepayment of fees. *See* 28 U.S.C. § 1915(a)(1).

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Petitioners and note service on the docket. The Court directs Petitioners to each submit the attached IFP applications, within 30 days of the date of this order. No summons shall issue at this time. If Petitioners comply with this order, the case shall be processed in accordance with the procedures of the Clerk's Office. If Petitioners fail to comply with this order within the time allowed, the action will be dismissed.

In light of the current global health crisis, parties proceeding *pro se* are encouraged to submit all filings by email to Temporary_Pro_Se_Filing@nysd.uscourts.gov. *Pro se* parties also are encouraged to consent to receive all court documents electronically. A [consent to electronic service form](#) is available on the Court's website. *Pro se* parties who are unable to use email may submit documents by regular mail or in person at the drop box located at the U.S. Courthouses in Manhattan ([500 Pearl Street](#)) and White Plains ([300 Quarropas Street](#)). For more information, including instructions on this new email service for *pro se* parties, please visit the Court's website at nysd.uscourts.gov.

Dated: July 30, 2020
New York, New York



Louis L. Stanton
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(full name of the plaintiff or petitioner applying (each person
must submit a separate application))

-against-

CV _____ () ()

(Provide docket number, if available; if filing this with
your complaint, you will not yet have a docket number.)

(full name(s) of the defendant(s)/respondent(s))

APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS

I am a plaintiff/petitioner in this case and declare that I am unable to pay the costs of these proceedings and I believe that I am entitled to the relief requested in this action. In support of this application to proceed *in forma pauperis* (IFP) (without prepaying fees or costs), I declare that the responses below are true:

1. Are you incarcerated? ☐ Yes ☐ No (If "No," go to Question 2.)

I am being held at: _____

Do you receive any payment from this institution? ☐ Yes ☐ No

Monthly amount: _____

If I am a prisoner, *see* 28 U.S.C. § 1915(h), I have attached to this document a "Prisoner Authorization" directing the facility where I am incarcerated to deduct the filing fee from my account in installments and to send to the Court certified copies of my account statements for the past six months. *See* 28 U.S.C. § 1915(a)(2), (b). I understand that this means that I will be required to pay the full filing fee.

2. Are you presently employed? ☐ Yes ☐ No

If "yes," my employer's name and address are: _____

Gross monthly pay or wages: _____

If "no," what was your last date of employment? _____

Gross monthly wages at the time: _____

3. In addition to your income stated above (which you should not repeat here), have you or anyone else living at the same residence as you received more than \$200 in the past 12 months from any of the following sources? Check all that apply.

(a) Business, profession, or other self-employment	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
(b) Rent payments, interest, or dividends	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No

- | | | |
|---------------------------------------------------------------------------------------------|------------------------------|-----------------------------|
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Disability or worker's compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) Gifts or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other public benefits (unemployment, social security, food stamps, veteran's, etc.) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (g) Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

If you answered "No" to all of the questions above, explain how you are paying your expenses:

4. How much money do you have in cash or in a checking, savings, or inmate account?

5. Do you own any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value, including any item of value held in someone else's name? If so, describe the property and its approximate value:

6. Do you have any housing, transportation, utilities, or loan payments, or other regular monthly expenses? If so, describe and provide the amount of the monthly expense:

7. List all people who are dependent on you for support, your relationship with each person, and how much you contribute to their support (only provide initials for minors under 18):

8. Do you have any debts or financial obligations not described above? If so, describe the amounts owed and to whom they are payable:

Declaration: I declare under penalty of perjury that the above information is true. I understand that a false statement may result in a dismissal of my claims.

Dated

Signature

Name (Last, First, MI)

Prison Identification # (if incarcerated)

Address

City

State

Zip Code

Telephone Number

E-mail Address (if available)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(full name of the plaintiff or petitioner applying (each person
must submit a separate application))

-against-

CV _____ () ()

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Declaration: I declare under penalty of perjury that the above information is true. I understand that a false statement may result in a dismissal of my claims.

Dated

Signature

Name (Last, First, MI)

Prison Identification # (if incarcerated)

Address

City

State

Zip Code

Telephone Number

E-mail Address (if available)